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No. 89-81

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

MIRIAM WILSON, NADINE SCHNURSTEIN, RONALD BARROW, GLORIA ABBEY-LYLES and PATRICIA VADER, Individually and as next friends of Charles Walker,

Petitioners,

vs.

MICHAEL LANE, Director of the Illinois Department of Corrections,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

NEIL F. HARTIGAN
Attorney General, State of Illinois

MICHAEL A. FICARO
First Assistant Attorney General

ROBERT J. RUIZ
Solicitor General, State of Illinois

TERENCE M. MADSEN
KENNETH A. FEDINETS *
Assistant Attorneys General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-2580

Counsel for Respondent

* Counsel of Record

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals for the Seventh Circuit applied the proper standard to determine whether petitioners had standing to bring a next friend habeas corpus petition on behalf of Charles Walker.

2. Whether the United States Court of Appeals for the Seventh Circuit applied the proper standard to determine whether petitioners had individual standing to challenge the constitutionality of the Illinois death penalty statute.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at *Wilson v. Lane*, 870 F.2d 1250 (7th Cir. 1989). The opinion has been submitted to this Court as Appendix A to the Petition for Writ of Certiorari, and, therefore, is not contained in this Brief in Opposition.

JURISDICTION

The jurisdiction of this Court is properly invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Charles Walker was charged by information filed by the St. Clair County, Illinois, State's Attorney with the murder of Sharon Winker and Kevin Paule pursuant to Ill. Rev. Stat. 1983, ch. 38, § 9-1 and with armed robbery pursuant to Ill. Rev. Stat. 1983 ch. 38, § 18-2. During pretrial proceedings, the prosecution indicated that it would seek a sentence of death if Walker was convicted of murder. Walker entered a plea of guilty and was found guilty as charged.

The cause proceeded to a sentencing hearing before a jury. The jury entered a verdict of death. The circuit court sentenced Walker to death for murder and thirty years imprisonment for armed robbery. The Illinois Supreme Court affirmed the judgment on appeal. *People v. Walker*, 109 Ill.2d 484, 488 N.E.2d 529 (1985).

On December 27, 1985, Walker moved the Illinois Supreme Court to terminate further proceedings. On February 6, 1986, the Court denied Walker's motion and denied appointed counsel's petition for rehearing.

Counsel for Walker filed a petition for writ of certiorari in the United States Supreme Court. Walker opposed the filing and refused to sign an affidavit in support of the

motion to proceed *in forma pauperis*. The United States Supreme Court denied certiorari on December 1, 1986. *Walker v. Illinois*, ___ U.S. ___, 107 S.Ct. 598 (1986), *reh'g denied*, ___ U.S. ___, 107 S.Ct. 913 (1987).

On February 19, 1987, the Illinois Supreme Court remanded the cause to the Circuit Court of St. Clair County for a hearing to determine whether Walker:

> (1) is mentally competent to waive further legal actions on his behalf;
>
> (2) has made a knowing and intelligent waiver of any such further legal actions; and
>
> (3) is fit to be executed.

Following the hearing in the circuit court, the Illinois Supreme Court on September 28, 1987, issued the following order:

> Upon review of the briefs and oral argument in this matter, the court finds that rehearing in the circuit court of St. Clair County is necessary for compliance with this court's order of February 19, 1987, which required a full and meaningful hearing to determine whether Charles Walker: (1) is mentally competent to waive further legal actions on his behalf; (2) has made a knowing and intelligent waiver of any such further legal actions; and (3) is fit to be executed.
>
> Pursuant to this court's supervisory authority, this court retains jurisdiction over this cause, and orders the circuit court of St. Clair County to conduct a rehearing of this matter within 60 days of this order. The rehearing shall be in accordance with *Rees v. Peyton* (1966), 384 U.S. 314, and *Gilmore v. Utah* (1976), 429 U.S. 1012, and shall conform to the requirements of section 5-2-3 of the Unified Code of Corrections (Ill. Rev. Stat. 1985, ch. 38, par. 1005-2-5), and *Ford v. Wainwright* (1986), ___ U.S. ___, 106 S.Ct. 2925, 91 L.Ed.2d 335. The circuit court is fur-

ther directed to consider all available evidence relevant to the court's findings of fact concerning the three questions raised for consideration.

It is further ordered that Robert H. Rice is hereby appointed as an attorney in the nature of a Guardian Ad Litem for Charles Walker to raise the issues set forth in the first paragraph in regard to the death penalty on behalf of Charles Walker regardless of Charles Walker's desires.

Michael Constance is appointed to represent Charles Walker at the rehearing.

The circuit court shall report its findings of fact to this court within 60 days from the date of this order, so that this matter may be reviewed by this court at the January 1988 Term. This court after review, if appropriate, will set a date for execution.

A hearing was held pursuant to the above order in the Circuit Court of St. Clair County on November 20, 1987. Following the hearing, the circuit court made the following findings:

1. Defendant is aware of the legal recourse available to him in attacking his conviction and death sentence, including state post-conviction relief [*Ill. Rev. Stat.*, 1985, ch. 38, sec. 122-1 *et seq.*] and executive clemency;

2. Defendant is mentally competent to seek legal relief on his own behalf from the judgment imposed against him;

3. Defendant has the mental capacity to make a rational choice concerning the continuation or abandonment of further litigation attacking his conviction and sentence [*Rees v. Payton*, 384 U.S. 312, 316 (1966)];

4. Defendant does not suffer from any physical condition which impairs his mental capacity to waive further proceedings;

5. Defendant does not suffer from terminal lung disease;

6. Defendant does not choose to be executed because he fears other inmates;

7. Defendant has made a knowing and intelligent waiver of further legal action on his behalf [*Johnson v. Zerbst*, 304 U.S. 458, 467-468 (1938)];

8. Defendant has made a knowing and intelligent waiver of counsel for the purpose of further proceedings challenging the judgment against him [*Johnson v. Zerbst*, 304 U.S. 458, 467-468 (1938)];

9. Defendant understands the nature and purpose of the death sentence to be imposed against him [*Ford v. Wainwright*, 106 S.Ct. 2595, 2603 (1986); *Ill. Rev. Stat.*, 1985, ch. 38, sec. 1005-2-3];

10. Defendant understands that the State intends to execute him by lethal injection as punishment for the crime of murder [*Ill. Rev. Stat.* 1985, ch. 38, sec. 119-5];

11. Defendant is fit to be executed.

On January 19, 1988, the Illinois Supreme Court issued the following order:

> On February 13, 1987, the Court, pursuant to its supervisory authority, retained jurisdiction of this capital case and directed the Circuit Court of St. Clair County to conduct a full and meaningful hearing to determine whether Charles Walker: (1) is mentally competent to waive further legal actions on his behalf; (2) has made a knowing and intelligent waiver of any such further legal actions; and (3) is fit to be executed. The Circuit Court also was directed to appoint counsel other than the Public Defender of St. Clair County to represent Charles Walker in the proceedings and to report its findings and conclusions to this Court.

Upon remand the Circuit Court found that Charles Walker is mentally competent to waive further legal actions, has made a knowing and intelligent waiver of further legal actions, and is fit to be executed. The findings of the Circuit Court and the transcripts of the proceedings were filed with this Court on June 29, 1987, and July 6, 1987, respectively.

Thereafter this Court, on its own motion, directed Charles Walker to show cause why a new execution date should not be set and the mandate ordered to issue. The State Appellate Defender was appointed to represent Charles Walker on the rule to show cause.

On September 28, 1987, after reviewing the briefs and oral argument on the rule to show cause, the Court found that rehearing in the Circuit Court of St. Clair County was necessary for compliance with the Court's order of February 19, 1987. Pursuant to the Court's supervisory authority, jurisdiction was retained and the Circuit Court of St. Clair County was ordered to conduct a rehearing of the matter and report its findings within 60 days so that this Court could review the matter at the January 1988 Term. The rehearing, like the original hearing, was ordered to be conducted in accordance with *Rees v. Payton* (1966), 384 U.S. 312, and *Gilmore v. Utah* (1976), 429 U.S. 1012, and to conform to the requirements of section 5-2-3 of the Unified Code of Corrections (Ill. Rev. Stat. 1985, ch. 38, par. 1005-2-3), and *Ford v. Wainwright* (1986), 477 U.S. ____, 106 S.Ct. 2595, 91 L.Ed. 2d 335. The Circuit Court was further directed to consider all available evidence relevant to the findings of fact concerning the three questions raised for consideration. An attorney was appointed in the nature of Guardian Ad Litem for Charles Walker to raise the issues concerning the questions for consideration on behalf of Charles Walker regardless of Charles Walker's desires, and another attorney was appointed to represent Charles Walker at the rehearing.

The Circuit Court of St. Clair County after holding the prescribed rehearing, found, *inter alia*, that Charles Walker is aware of the legal resources available to him; that he has the mental capacity to make a rational choice concerning continuation or abandonment of further litigation attacking his conviction and sentence; that he has made a knowing and intelligent waiver of further legal action on his behalf, and that he is fit to be executed.

The Circuit Court also scheduled January 20, 1988, as the execution date for Charles Walker. Because the Circuit Court did not have the authority to set an execution date under the terms of the order remanding the cause for rehearing, that execution date is vacated.

After carefully reviewing the transcript of the rehearing conducted in the Circuit Court of St. Clair County, this Court finds that Charles Walker is mentally competent to waive further legal actions on his behalf; has made a knowing and intelligent waiver of any such further legal actions; and is fit to be executed.

IT IS THEREFORE ORDERED that the sentence of death entered against Charles Walker in the Circuit Court of St. Clair County, as affirmed on appeal, shall be implemented on Tuesday, May 10, 1988. The mandate is to issue forthwith to the Circuit Court of St. Clair County, with copies to the Director of Corrections, to the warden at Stateville Correctional Center, and to the warden of the institution wherein Charles Walker is confined.

On March 15, 1988, the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, received a Next Friend Petition for a Writ of Habeas Corpus, No. 88 C 2190. The petition sought to challenge the constitutionality of the Illinois death penalty statute, Ill. Rev. Stat. ch. 38, § 9-1, and Charles

Walker's sentence of death. The petition was filed by Miriam Wilson, Nadine Schnurstein, Ronald Barrow, Gloria Abbey-Lyles, and Patricia Vader, individually and as next friends on behalf of Charles Walker.

Miriam Wilson is a resident of Chicago and both a member of the Benedictine Sisters and of the Illinois Coalition Against the Death Penalty. As a member of the Illinois Coalition Against the Death Penalty she visited death row inmates incarcerated at the Menard Correctional Center and met Charles Walker in May 1985 through those visits. Nadine Schnurstein met Charles Walker through a newsletter article and has visited him at the Menard Correctional Center on four occasions. Ronald Barrow is presently incarcerated on death row at the Menard Correctional Center and met Charles Walker in June 1985 at the institution. Barrow is challenging his conviction and sentence of death on direct appeal to the Illinois Supreme Court. Gloria Abbey-Lyles was introduced to Charles Walker in 1985 by her husband, an inmate incarcerated at the Menard Correctional Center. Patricia Vader is a resident of Chicago and the Director of the Illinois Coalition Against the Death Penalty. As a member of the Illinois Coalition Against the Death Penalty she visited death row inmates incarcerated at the Menard Correctional Center and met Charles Walker in May 1985 through those visits. Her visits with Charles Walker lasted for twenty minutes.

On March 21, 1988, the district court, Judge Nicholas J. Bua, ordered that the case be transferred to the Southern District of Illinois in that venue did not properly exist in the Northern District.

On March 29, 1988, the district court for the Southern District of Illinois, Judge William Stiehl, ordered that petitioners may supplement their pleadings on the questions

of jurisdiction, standing and competency. The district court further ordered that respondents were to reply and set the matter for oral argument on April 7, 1988. The petitioners on March 30, 1988, filed in the district court their Supplement to Next Friend Habeas Corpus Petition Concerning Exhaustion of State Remedies and on April 4, 1988, filed their Supplemental Memorandum in Support of Next Friend Habeas Corpus Petition. On April 7, 1988, respondent filed his reply to petitioners' supplemental memorandum in support of the next friend habeas orpus petition. On April 7, 1988 the district court heard oral argument and took the matter under advisement.

The district court on April 19, 1988, issued a Memorandum Opinion and Order wherein the court held that petitioners did not have individual standing. *Wilson v. Lane*, 697 F. Supp. 1489 (S.D. Ill. 1988). In order to determine whether petitioners had next friend standing, the court found that an evidentiary hearing was necessary on the issue of whether Charles Walker suffered from an overborne will which rendered his decision to abandon further review involuntary. *Id.* at 1500. In order to assist the court in its inquiry, a psychiatric/psychological evaluation of Charles Walker was to be conducted by an expert appointed by the court and the parties were given the opportunity to have an expert examine Charles Walker. On May 13, 1988, the district court appointed the Federal Public Defender to represent Charles Walker.

On August 8, 1988, an evidentiary hearing was held in the district court. Petitioners called their expert, Dr. Curtis Barrett, a clinical psychologist and professor at the University of Louisville. (Transcript of August 8, 1988 at 4) He testified that he had previously testified in six capital cases and his testimony was on behalf of the defendants. (Tr. 61-62) He testified as to his two conclusions

he made after his evaluation of Charles Walker: 1) Charles Walker has suffered from the disease of alcoholism for probably a period of twenty years; 2) Charles Walker was not suffering from any mental disorder, disease or defect. (Tr. 20-21) With respect to Charles Walker's waiver of further proceedings, Dr. Barrett stated that "there is a substantial probability that Mr. Walker's actions are the result of his alcoholism that has been as yet untreated." (Tr. 49) Dr. Barrett acknowledged that, although he had found Walker to have been an alcoholic for twenty years, Walker had been incarcerated for the last fifteen of those years. (Tr. 59)

Respondent called the court's expert witness, Dr. Robert Becker, the Chairman of the Department of Psychiatry and Professor of Psychiatry at Southern Illinois University School of Medicine in Springfield, Illinois. (Tr. 90-91) Based on his expertise, Dr. Becker concluded there was no evidence of an overborne will and that Charles Walker was capable of making the decision to waive further proceedings. (Tr. 110) He further testified that alcoholism did not contribute to Charles Walker's decision to waive further proceedings. (Tr. 110)

Finally, Charles Walker testified that in 1983 he told his sister that if his sentence of death was affirmed on appeal by the Illinois Supreme Court he would not proceed any further to challenge his sentence. (Tr. 152)

On August 26, 1988, the district court issued a Memorandum Opinion and Order wherein the court denied the petition for a writ of habeas corpus and dismissed the cause of action. *Wilson v. Lane*, 697 F. Supp. 1500 (S.D. Ill. 1988).

On March 15, 1989, the United States Court of Appeals for the Seventh Circuit affirmed the judgment of the dis-

trict court. *Wilson v. Lane*, 870 F.2d 1250 (7th Cir. 1989). On April 19, 1989, the court denied rehearing and rehearing en banc. On May 1, 1989, the court stayed the issuance of the mandate until June 1, 1989. On June 1, 1989, Justice Stevens stayed the mandate of the court below pending action on the petition for a writ of certiorari.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

The respondent respectfully requests this Court to deny the Petition for Writ of Certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit insofar as the decision does not depart from well-settled decisional law of this Court. In seeking a writ of certiorari in this cause, petitioners advance two reasons in support of the issuance of the writ: 1) whether the court below applied the proper standard to determine whether petitioners had standing to bring a next friend petition on behalf of Charles Walker; and 2) whether the court below applied the proper standard to determine whether petitioners had individual standing to challenge the constitutionality of the Illinois death penalty statute. Respondent maintains that the court of appeals fully considered and correctly decided the questions presented for review. Further review of this cause in unnecessary. This Court should deny the Petition for Writ of Certiorari.

Furthermore, this Court should deny the petition for a writ of certiorari notwithstanding petitioners' request for this Court "to reserve action on this matter pending the disposition of *Whitmore v. Arkansas*, No. 88-7146

(U.S. July 3, 1989) for which this Court recently granted *certiorari* and which Petitioners understand raises similar issues concerning next-friend standing." (Petition for Writ of Certiorari at 1, 26) Such action by this Court is not required where the cases are distinguishable. The questions presented for review in *Whitmore* are as follows:

> (1) Does the Eighth Amendment ban against cruel and unusual punishment require that mandatory appellate review be conducted in all cases in which death penalty has been imposed? (2) If mandatory appellate review of death penalty is constitutionally required, may that issue be raised by a third party?

(45 CrL 4088) In the case at bar, Charles Walker, the death row inmate on whose behalf petitioners sought to maintain an action for a writ of habeas corpus, has already received appellate review of his murder conviction and death sentence by the Illinois Supreme Court. *People v. Walker*, 109 Ill. 2d 484, 488 N.E.2d 529 (1985), *cert. denied*, ____ U.S. ____, 107 S.Ct. 598 (1986). Indeed, petitioners' Statement of the Case indicates that Walker already has received appellate review. (Petition for Writ of Certiorari at 4) Where the factual circumstances in the present case are absolutely different from those in *Whitmore*, this Court need not "reserve action on this matter pending the disposition of *Whitmore v. Arkansas*."

I.

THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT APPLIED THE PROPER STANDARD TO DETERMINE WHETHER PETITIONERS HAD STANDING TO BRING A NEXT FRIEND HABEAS CORPUS PETITION ON BEHALF OF CHARLES WALKER.

Petitioners sought to maintain an application for a writ of habeas corpus in the district court as next friend on behalf of Charles Walker. They asserted next friend stand-

ing by claiming that the conditions of confinement under which Charles Walker was held on death row "have impeded and violated Mr. Walker's ability to freely and voluntarily exercise his constitutional rights, including his right to pursue state post-conviction rights and federal habeas corpus remedies." (R. 1 at ¶16 at 6-7) The district court, after an evidentiary hearing, found that petitioners lacked next friend standing. *Wilson v. Lane*, 697 F. Supp. 1500 (S.D. Ill. 1988). The United States Court of Appeals for the Seventh Circuit affirmed the judgment of the district court with respect to this issue. *Wilson v. Lane*, 870 F.2d 1250, 1252-54 (7th Cir. 1989). Petitioners would have this Court grant the Petition for Writ of Certiorari to review the decision of the court below that petitioners lacked next friend standing to bring a petition for a writ of habeas corpus on behalf of Charles Walker. Respondent submits petitioners do not advance a sufficient basis for the grant of the petition for a writ of certiorari with respect to this claim.

28 U.S.C. § 2242 provides that an "[a]pplication for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf." An application for a writ of habeas corpus can be brought by a next friend when the person on whose behalf the application is brought is incompetent and thus "unable to seek relief in his own behalf." *Gilmore v. Utah*, 429 U.S. 1012, 1014 (1976) (Burger, C.J., concurring). For petitioners to have had standing to bring an action for a writ of habeas corpus as next friend on behalf of Charles Walker and for the district court to have had jurisdiction to entertain the petition, petitioners were required to show Walker's lack of competency. *Lenhard v. Wolff*, 443 U.S. 1306, 1308 (1979) (Rehnquist, J., as Circuit Justice) ("A successful attack on

Bishop's competency is the requisite threshold for applicant's [next friend] standing."); *Rumbaugh v. McKaskle*, 730 F.2d 291, 293 (5th Cir. 1984) (if inmate under a sentence of death is incompetent to waive his right to federal habeas corpus review, his parents have standing to bring a next friend petition).

In view of the requirement imposed by 28 U.S.C. § 2242, respondent maintains the court below properly applied the standard set forth in *Rees v. Payton*, 384 U.S. 312, 314 (1966). In *Rees*, this Court articulated the standard to be applied by the federal court on remand to determine whether the death row inmate on whose behalf a petition for a writ of certiorari was brought had the mental capacity to choose not to pursue further challenges of a state court judgment of conviction:

> [W]hether he has capacity to appreciate his position to make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises.

Petitioners now argue that the court below erred in that it "specifically rejected the distinction between a competent decision and a voluntary waiver." (Petition for Writ of Certiorari at 11) Respondent initially notes that petitioners conceded that "[t]he next friend petition does not raise the issue of Mr. Walker's competency." (R. 10 at 10) Respondent contends the petitioners should not be heard to complain as to the standard applied by the district court and the court of appeals in view of the position they advanced before the district court. In petitioners' Supplemental Memorandum in Support of Next Friend Habeas Corpus Petition they argued that they had standing to bring the action for a writ of habeas corpus

as next friend based on Charles Walker's involuntary waiver of further legal challenges. (R. 10 at 9) In claiming that Charles Walker's waiver was involuntary the petitioners stated: "A person's conduct, while otherwise rational, is not voluntary if it is based on a person's overborne will or impaired self-determination that results from coercion or improper influence." (R. 10 at 10-11) Petitioners then proposed that involuntary behavior results if a waiver "is based on a person's overborne will or an impaired self-determination brought on by the exertion of any improper influence." (R. 10 at 11)

In view of the above, the district court found that "[p]etitioners, in their pleadings, limit their argument to the claim that Walker's decision to abandon his rights to further review demonstrates a flawed mental state resulting from an 'overborne will.' " *Wilson v. Lane*, 697 F. Supp. 1489 (S.D. Ill. 1988) The court went on to hold that the "issue of flawed mental state or overborne will is properly addressed under the capacity test set forth in *Rees*." *Id.* It is clear that the court took the correct approach in view of petitioners' specific contentions advanced in their application for a writ of habeas corpus.

Respondent's position that the United States Court of Appeals for the Seventh Circuit applied the proper standard to petitioners' claim of involuntariness is further supported by this Court's decision in *Culombe v. Connecticut*, 367 U.S. 568 (1961). In *Culombe*, this Court stated the test to be applied for a determination as to the voluntariness of a confession:

> Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination is critically impaired, the use of his confession offends due process.

Id. at 602. Following the decision in *Culombe*, this Court in *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963), stated that the question as to voluntariness "is whether the defendant's will was overborne at the time he confessed" and "if so, the confession cannot be deemed 'the product of a rational intellect and a free will.' " In view of the consistent position taken by this Court, only if Charles Walker's will had been overborne and his capacity for self-determination critically impaired should the court of appeals have found his waiver to have been involuntary.

II.

THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT APPLIED THE PROPER STANDARD TO DETERMINE WHETHER PETITIONERS HAD INDIVIDUAL STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE ILLINOIS DEATH PENALTY STATUTE.

Petitioners also would have this Court exercise its discretion to review the decision of the United States Court of Appeals for the Seventh Circuit that petitioners lacked individual standing to attack the constitutionality of the Illinois death penalty statute. (Petition for Writ of Certiorari at 16) In affirming the judgment of the district court that petitioners lacked standing as individuals to challenge the constitutionality of the Illinois death penalty statute, the court below held:

> [A]ppellants can point to no given obstacle preventing Walker from asserting his own claims now that we have upheld the district court's ruling that Walker waived voluntarily further legal efforts on his behalf. Under *Singleton* [*v. Wulff*, 428 U.S. 106 (1976)], then, even if the relationship between appellants and Walker is a close one, the reasons for requiring Walker to assert his own rights still exist. Appellants,

> therefore, also lack standing as individuals to assert Walker's right to challenge the Illinois death penalty statute.

Wilson v. Lane, 870 F.2d 1250, 1255-56 (7th Cir. 1989). Respondent submits the court below properly found petitioners lacked standing as individuals to attack the constitutionality of the Illinois death penalty statute.

Even assuming *arguendo* that the constitutional dimension of individual standing had been satisfied, injury in fact as required by Article III, a second component must have been satisfied to insure that petitioners were the proper proponents of the rights of Charles Walker. *Singelton v. Wulff*, 428 U.S. 106, 112 (1976) (plurality opinion). Respondent maintains that the decisions of this Court make clear that a "plaintiff generally must assert his own legal right and interests, and cannot rest his claim to relief on the legal rights or interests of third parties" even if he has alleged injury sufficient to satisfy Article III. *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Although there is an exception to the above rule, where a third party is unable to assert his own rights, a litigant is allowed to assert third party claims that might otherwise remain unindicated. *Singleton v. Wulff*, 428 U.S. 106, 115-16 (1976) (plurality opinion), if the special circumstance is absent, a litigant is restricted to asserting his own constitutional rights. *Warth v. Seldin*, 422 U.S. 490, 499 (1975).

In the case at bar, insofar as Charles Walker has indicated that he does not want to have petitioners represent him[1] and combined with the lack of any genuine

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[1] In a letter to the district court, Charles Walker stated as follows:

> In regards to the Habeas Corpus petition filed in my case (cause No. 88-3180).

(Footnote continued on following page)

obstacle to Charles Walker seeking judicial relief if he so desired, a decision by the lower court allowing petitioners to advance the claims in the petition for a writ of habeas corpus would have been contrary to a long line of Supreme Court precedent.

Although petitioners advance various "prudential" considerations which they claim the court below ignored (Petition for A Writ of Certiorari at 16-20), the court correctly found the prudential considerations inadequate to support petitioners' individual standing. " '[M]ere interest' in the resolution of an issue, no matter how vigorously and vocally expressed, is of itself inadequate as a substitute for the Article III requirement that a litigant demonstrate personal, concrete injury." *Mulqueeny v. National Commission on the Observance of International Women's Year*, 549 F.2d 1115, 1121 (7th Cir. 1977). Where petitioners lack standing as individuals to challenge the constitutionality of the Illinois Death Penalty statute, which has been upheld as constitutional by the Illinois Supreme Court on at least eighty-four occasions where the state supreme court has affirmed a defendant's conviction for murder and sentence of death, petitioners should not be permitted to continue to utilize the federal courts to interfere with the administration of justice in Illinois. Indeed, the Illinois Supreme Court rejected constitutional chal-

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[1] *continued*

> This is to affirm that I don't want any one speaking or acting on my behalf. Before I was sentenced I had told my sister that if I was sentenced to death, that one appeal had to be filed according to law but after that I was going to stop my appeals and ask for an execution date. The conditions on death row or any place else has nothing to do with my decision. The people who signed that writ have only known me for the short time I've been here.

Wilson v. Lane, 697 F. Supp. 1489, 1491 n.1 (S.D. Ill. 1988).

lenges in affirming Charles Walker's conviction of murder and sentence of death. Respondent submits that this Court should not allow petitioners to abuse this Court's certiorari jurisdiction.

CONCLUSION

For the above-advanced reasons, respondent respectfully requests this Court to deny the Petition for a Writ of Certiorari.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General, State of Illinois

MICHAEL A. FICARO
First Assistant Attorney General

ROBERT J. RUIZ
Solicitor General, State of Illinois

TERENCE M. MADSEN
KENNETH A. FEDINETS *
Assistant Attorneys General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-2580

Counsel for Respondent

* Counsel of Record